



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

July 26, 1984

6 pages
SPECIAL

LEGISLATIVE REFERRAL MEMORANDUM

To:

Legislative Liaison Officer-

Department of State - Alba - 632-0430
Department of Commerce - Levitt - 377-3151
Army (Corps of Engineers) - Rozsa - 272-0032

Subject:

Interior testimony for TOMORROW on H.R. 3194, a bill dealing with historic shipwrecks.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than 1 P.M. TODAY. We must presume you have no comments if you have not called by then.

Questions should be referred to Randy Coleman (395-4606)
the legislative analyst in this office or to David Allen
(395-4993).

Ronald K. Peterson
RONALD K. PETERSON FOR
Assistant Director for
Legislative Reference

Enclosures

Rec'd 7/26/84 - Doc
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SPECIAL

H.R. 3194--Historic Shipwrecks

WE APPRECIATE THE OPPORTUNITY TO PRESENT THE VIEWS OF THE DEPARTMENT OF THE INTERIOR ON H.R. 3194, THE ABANDONED SHIPWRECK ACT BILL, AS AMENDED BY THE COMMITTEE ON MERCHANT MARINE AND FISHERIES ON JULY 6, 1984.

IN SEPTEMBER OF 1983 THE MERCHANT MARINE COMMITTEE HELD HEARINGS ON H.R. 3194 AS INTRODUCED. A COPY OF OUR PREPARED TESTIMONY PROVIDED AT THOSE HEARINGS IS ATTACHED TO MY STATEMENT. AS INTRODUCED, THE BILL WOULD HAVE (a) RELEASED TO THE SEVERAL STATES ANY CLAIMS OF OWNERSHIP AND ANY RIGHT TO ADMINISTER HISTORIC SHIPWRECKS BY THE FEDERAL GOVERNMENT WITHIN THE NAVIGABLE WATERS OF A STATE; (b) MADE INAPPLICABLE THE UNITED STATES MARITIME LAW OF SALVAGE TO ANY HISTORIC SHIPWRECKS; AND (c) ESTABLISHED SUPERVISION AND CONTROL OVER HISTORIC SHIPWRECKS IN UNITED STATES WATERS OUTSIDE STATE BOUNDARIES IN THE DEPARTMENT OF THE INTERIOR.

THE MERCHANT MARINE COMMITTEE SUBSTITUTE MAKES SEVERAL SUBSTANTIVE AMENDMENTS: FIRST, IT NARROWS THE DEFINITION OF HISTORIC SHIPWRECKS TO APPLY ONLY TO ^BABANDONED SHIPWRECKS AND THEIR CARGO AND CONTENTS, AND DOES NOT INCLUDE OTHER SUBMERGED SITES, STRUCTURES, OBJECTS AND BUILDINGS OF HISTORICAL, ARCHEOLOGICAL, EDUCATIONAL OR SCIENTIFIC INTERESTS, WHICH WERE INCLUDED BY THE ORIGINAL BILL. SECOND, THE CRITERIA USED TO DETERMINE WHICH ABANDONED SHIPWRECKS ARE TO BE PROTECTED ARE BASED PRIMARILY ON THE NATURE OF THE VESSEL'S BURIAL AND SECONDARILY ON THE SIGNIFICANCE OF THE VESSEL. THIRD, IT ASSERTS FEDERAL TITLE TO SHIPWRECKS ON THE PUBLIC LANDS, BUT DOES NOT PLACE RESPONSIBILITY FOR THEIR CONTROL IN THE DEPARTMENT OF THE INTERIOR. FOURTH, IT INCLUDES TERRITORIES SUCH AS PUERTO RICO AND THE VIRGIN ISLANDS, WITHIN THE DEFINITION OF STATE, WHEREAS THE ORIGINAL BILL

APPLIED ONLY TO STATES OF THE UNION. FINALLY, IT DIRECTS THE ADVISORY COUNCIL
ON HISTORIC PRESERVATION TO ^{prepare} ~~prepare~~ GUIDELINES FOR THE PROTECTION OF SHIPWRECKS
AND PROPERTIES.

WE RECOMMEND ENACTMENT OF THE SUBSTITUTE BILL, IF MODIFIED. AS WE STATED IN
SEPTEMBER TO THE COMMITTEE ON MERCHANT MARINE AND FISHERIES, WE BELIEVE THAT
THE BILL WILL PROVIDE A MECHANISM FOR THE URGENTLY NEEDED PROTECTION OF THE
NATION'S SUNKEN HISTORIC SHIPWRECKS. WE ARE PLEASED TO SEE THAT A NUMBER OF
OUR RECOMMENDATIONS TO MODIFY THE ORIGINAL BILL WERE ADOPTED IN THE SUBSTITUTE
BILL. HOWEVER, WE RECOMMEND A NUMBER OF ADDITIONAL MODIFICATIONS TO MAINTAIN
CONSISTENCY WITH OTHER PRESERVATION STATUTES AND AGENCY RESPONSIBILITIES.

THE SUBSTITUTE USES THE FORTUITOUS EVENT OF BURIAL OF AN ABANDONED SHIPWRECK
AS ONE OF THE MEANS TO DETERMINE TITLE AND TRANSFER TO STATES FOR PROTECTION.
SECTION 4(a)(1) AND 4(a)(2) STATE THAT THE UNITED STATES ASSERTS TITLE TO ANY
ABANDONED SHIPWRECK THAT IS SUBSTANTIALLY BURIED IN OR IN CORALLINE FORMATIONS
ON SUBMERGED LANDS OF A STATE. WE SUPPORT THE DEFINITION CONTAINED IN THE
MERCHANT MARINE COMMITTEE REPORT THAT A SHIPWRECK IS SUBSTANTIALLY BURIED WHEN
TOOLS FOR EXCAVATION ARE NECESSARY TO REMOVE BOTTOM SEDIMENTS TO GAIN ACCESS
TO THE SHIPWRECK, ITS CARGO, OR CONTENTS. WE ALSO WOULD CONSIDER A SHIPWRECK
TO BE IN CORALLINE FORMATIONS WHEN TOOLS OF EXCAVATION ARE NECESSARY TO REMOVE
ENCrustATIONS TO GAIN ACCESS TO THE SHIPWRECK, ITS CARGO, OR CONTENTS.

SECTION 4(a)(3) ALSO PROVIDES PROTECTION TO HISTORICALLY SIGNIFICANT SHIPWRECKS
THAT ARE FORMALLY LISTED ON THE NATIONAL REGISTER OF HISTORIC PLACES, REGARDLESS
OF HOW THE SHIPWRECK IS BURIED. LESS THAN 50 SHIPWRECKS CURRENTLY ARE LISTED
ON THE NATIONAL REGISTER. OBVIOUSLY THE MAJORITY OF HISTORICALLY SIGNIFICANT

SHIPWRECKS HAVE NOT BEEN FORMALLY LISTED ON THE NATIONAL REGISTER. FOR CONSISTENCY WITH OTHER PRESERVATION LAWS AND REGULATIONS, WE RECOMMEND THAT SECTION 4(a)(3)(a) BE REVISED TO STATE THAT THE UNITED STATES ASSERTS TITLE TO ANY ABANDONED SHIPWRECK THAT IS ON SUBMERGED LANDS OF A STATE AND THAT IS LISTED OR ELIGIBLE FOR LISTING ON THE NATIONAL REGISTER OF HISTORIC PLACES. THIS MODIFICATION ALSO WOULD PROVIDE PROTECTION FOR HISTORICALLY SIGNIFICANT SHIPWRECKS THAT ARE NO SUBSTANTIALLY BURIED IN, OR IN CORALLINE FORMATIONS ON, THE SUBMERGED LANDS OF A STATE AND ARE IN THE PROCESS OF BEING EVALUATED AND MONITORED TO THE NATIONAL REGISTER.

IN ADDITION, SECTION 4(a)(3) STATES THAT FOR THE ACT TO APPLY TO ANY ABANDONED SHIPWRECK THAT IS ON SUBMERGED LANDS OF A STATE AND IS LISTED ON THE NATIONAL REGISTER OF HISTORIC PLACES, THE PUBLIC MUST BE GIVEN ADEQUATE NOTICE OF THE SITE LOCATIONS. UNDER THE ARCHAEOLOGICAL RESOURCES PROTECTION ACT AND THE AMENDED NATIONAL HISTORIC PRESERVATION ACT, AGENCIES HAVE BEEN GIVEN THE AUTHORITY TO WITHHOLD FROM DISCLOSURE TO THE PUBLIC INFORMATION RELATING TO THE LOCATION OR NATURE OF THE ARCHEOLOGICAL OR HISTORIC PROPERTY IF SUCH DISCLOSURE WOULD RESULT IN A SUBSTANTIAL RISK OF HARM, THEFT, OR DESTRUCTION TO THE PROPERTY. THEREFORE WE RECOMMEND THAT THE LANGUAGE IN SECTION 4(a)(3)(B) EITHER BE DELETED OR MODIFIED TO STATE THAT PUBLICATION OF GENERAL LOCATIONAL INFORMATION ON A SITE SUCH AS MINERAL LEASE BLOCK NUMBERS, RATHER THAN SPECIFIC COORDINATES, WOULD CONSTITUTE ADEQUATE NOTICE OF ITS LOCATION.

WE ARE PLEASED TO SEE THE INCLUSION OF LANGUAGE IN SECTION 4(c) SPECIFICALLY EXEMPTING FROM TRANSFER TO STATES ANY ABANDONED SHIPWRECK THAT IS LOCATED IN OR ON PUBLIC OR INDIAN LANDS. HOWEVER, UNDER THE ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979, CULTURAL RESOURCES ON INDIAN LANDS ARE OWNED BY THE

INDIAN OR INDIAN TRIBE HAVING JURISDICTION OVER THE LAND. WE RECOMMEND THAT "PUBLIC AND INDIAN LANDS" BE DEFINED IN SECTION 3 BY REFERENCE TO THE 1979 ACT AND ITS IMPLEMENTING REGULATIONS, AND THAT SECTION 4(c) BE REVISED ACCORDINGLY. WE ALSO RECOMMEND THAT ADDITIONAL LANGUAGE BE INSERTED IN SECTION 4 SPECIFICALLY EXEMPTING FROM TRANSFER TO STATES ANY SHIPWRECK THAT IS UNDER THE CONTROL OF OR CLAIMED BY A FEDERAL AGENCY OR ANY SHIPWRECK THAT IS CLAIMED BY ANOTHER SOVEREIGNTY. ALTERNATIVELY, THE TERM "ABANDONED SHIPWRECK" COULD BE DEFINED IN SECTION 3.

SECTION 6 DIRECTS THE ADVISORY COUNCIL ON HISTORIC PRESERVATION TO PUBLISH ADVISORY GUIDELINES FOR THE PROTECTION OF SHIPWRECKS AND PROPERTIES THAT (a) ASSIST STATES AND THE UNITED STATES GOVERNMENT IN DEVELOPING LEGISLATION AND REGULATIONS TO CARRY OUT THEIR RESPONSIBILITIES UNDER THE ACT AND (b) ALLOW FOR RECREATIONAL EXPLORATION OF SHIPWRECK SITES THAT IS NON-INJURIOUS TO THE SHIPWRECK OR THE ENVIRONMENT SURROUNDING THE SITE. ~~BECAUSE THE DEPARTMENT OF THE INTERIOR IS ONE FEDERAL AGENCY WITH THE MOST EXPERTISE IN THE PRESERVATION OF SHIPWRECKS,~~ ^{the} WE RECOMMEND THAT THIS SECTION BE MODIFIED TO DIRECT THE DEPARTMENT, NOT THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, TO DEVELOP AND PUBLISH GUIDELINES FOR THE IDENTIFICATION, EVALUATION AND PROTECTION OF SHIPWRECKS. AS DIRECTED BY THE AMENDED NATIONAL HISTORIC PRESERVATION ACT, THE DEPARTMENT RECENTLY ISSUED THE SECRETARY OF THE INTERIOR'S STANDARDS AND GUIDELINES FOR ARCHEOLOGY AND HISTORIC PRESERVATION. THESE STANDARDS AND GUIDELINES ADDRESS THE FULL RANGE OF HISTORIC PRESERVATION MANAGEMENT ISSUES FROM INITIAL PLANNING, IDENTIFICATION, AND EVALUATION OF SIGNIFICANT ARCHEOLOGICAL AND HISTORIC PROPERTIES, AND DOCUMENTATION OF THOSE PROPERTIES. THE STANDARDS AND GUIDELINES ARE APPLICABLE TO ALL CLASSES OF PROPERTIES WHETHER TERRESTRIAL OR SUBMERGED. WE

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BELIEVE THAT IT WOULD BE MORE APPROPRIATE FOR THE DEPARTMENT TO EXPAND THESE STANDARDS TO INCLUDE MORE SPECIFIC GUIDANCE ~~FOR~~ ON THE PRESERVATION OF HISTORIC SHIPWRECKS RATHER THAN FOR ANOTHER AGENCY TO ISSUE ANOTHER POTENTIALLY INCONSISTENT SET OF GUIDELINES. CONSISTENT WITH SECTION 202 OF THE NATIONAL HISTORIC PRESERVATION ACT (AS AMENDED), THE ADVISORY COUNCIL ON HISTORIC PRESERVATION COULD BE DIRECTED TO DEVELOP MODEL LEGISLATION AND REGULATIONS FOR USE BY STATES IN DRAFTING LEGISLATION TO CARRY OUT THEIR RESPONSIBILITIES UNDER THE ACT. AS A MEMBER OF THE ADVISORY COUNCIL, THE DEPARTMENT WOULD BE PLEASED TO WORK WITH OTHER MEMBERS TOWARD THIS END.

IN ADDITION TO THE ABOVE SPECIFIC RECOMMENDATIONS, WE WOULD LIKE TO RAISE ONE OTHER GENERAL ISSUE, WHICH WAS ADDRESSED IN THE ORIGINAL BILL BUT NOT IN THE SUBSTITUTE BILL, FOR YOUR CONSIDERATION. THE SUBSTITUTE BILL DOES NOT ESTABLISH SUPERVISION OR CONTROL OVER HISTORIC SHIPWRECKS IN UNITED STATES WATERS OUTSIDE STATE BOUNDARIES. THE DEPARTMENT OF STATE HAS ADVISED US THAT UNDER INTERNATIONAL LAW, SUCH AUTHORITY EXISTS, ALTHOUGH LIMITED TO ACTIONS OF UNITED STATES NATIONALS AND ONLY WITH RESPECT TO SHIPWRECKS OF UNITED STATES ORIGIN. WE RECOMMEND THAT THE COMMITTEE CONSIDER INCLUDING LANGUAGE WHICH WOULD SPECIFY APPROPRIATE RIGHTS OF OWNERSHIP AND LEVELS OF SUPERVISION OR CONTROL OVER SHIPWRECKS THAT ARE SUBSTANTIALLY BURIED IN, OR IN CORALLINE FORMATIONS ON, OR ON SUBMERGED LANDS OF THE UNITED STATES BUT OUTSIDE STATE BOUNDARIES, GENERALLY SEAWARD FROM 3 MILES OF THE COASTLINE.

probably ex. 1. under title III

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U.S. House of Representatives
Committee on
Merchant Marine and Fisheries
Room 1334, Longworth House Office Building
Washington, D.C. 20515

June 18, 1984

Honorable Charles E. Bennett
 U.S. House of Representatives
 2107 Rayburn HOB
 Washington, D.C. 20515

Dear Charlie:

As you are aware, the Committee on Merchant Marine and Fisheries is scheduled to markup H.R. 3194, the historic shipwreck bill, on Tuesday, June 19, 1984. During the markup, I intend to offer an amendment in the nature of a substitute to the bill that would modify and clarify certain provisions as introduced. Knowing your long-standing commitment to this legislation, I want to take this opportunity to describe to you the major components of the substitute.

The substitute amendment proposes to transfer to the states title to abandoned shipwrecks on the submerged lands that are: (1) substantially buried; (2) in coralline formations (coral); or (3) listed on the National Register of Historic Places. The amendment affirms that abandoned shipwrecks on federal lands within the territorial sea are owned by the Federal Government but declares that the law of finds and the law of salvage will not apply to the abandoned shipwrecks described above. The territorial sea is three miles for most states except Texas and the western coast of Florida, for which three marine leagues (10.45 miles) is the dividing line.

The central thrust of the legislation is to confer upon the states title to, and responsibility for, the abandoned shipwrecks described above. To encourage consistency in the management of these resources by the states, the amendment requires that guidelines for managing shipwrecks be developed by the advisory council on historic preservation to provide national guidance to states in fulfilling their responsibilities for these resources.

Honorable Charles E. Bennett
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The bill as introduced and my amendment are directed to shipwrecks lying within the territorial sea. Neither address shipwrecks beyond three miles. Information made available to the Committee indicates that the large majority of shipwrecks lie close to shore; that is, within the territorial sea. Because the wrecks beyond the line are farther offshore and generally less accessible, they are less likely to be subject to diving and salvage than those lying closer to shore. For those historically important wrecks beyond the territorial sea, title III of the Marine Protection, Research and Sanctuaries Act confers upon the National Oceanic and Atmospheric Administration the authority to designate them as marine sanctuaries and protect them for the benefit of all. This authority has been used to protect the U.S.S. Monitor, which lies off Cape Hatteras, North Carolina. In addition, legal complications concerning the right of the United States under international law to claim title to historic shipwrecks on its outer continental shelf and administrative complications concerning the development of a Federal program for these resources have persuaded me that the simpler focus on the wrecks within the territorial sea enjoys a greater likelihood of legislative success.

I hope that the substitute that I am planning to offer at the markup meets with your approval and will receive your full support. As we prepare to consider this legislation, I want to acknowledge once again your commendable, steadfast commitment to legislation to protect these important cultural resources, and to thank you for bringing these issues to our attention. Should you want further information on the bill or my substitute, please feel free to call me or Mr. Ed Welch, Chief Counsel of the Committee, at 225-8183.

Sincerely,



WALTER B. JONES
Chairman